



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

Date

September, 2004¹

Action Requested

Please Review

To

All Interested Parties

Deadline

N/A

From

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Subject

Social Security Act, Title IV-E
Specific Findings and Orders
Dependency and Delinquency Proceedings

The underlying purpose of the court review system is to ensure the fulfillment of the original goals of the federal legislation, i.e. child safety, reunification when feasible and permanency—a stable home for the child to grow and develop into a happy and productive adult. The court's findings and orders are viewed as "...important safeguards(s) against inappropriate agency action..." and are to be more than a "...mere pro forma exercise in paper shuffling to obtain Federal funding..." (Senate Report No. 336, 96th Cong., 2nd Session (1980).)

The social worker's/probation officer's report prepared for each hearing must contain factual information that will support the court's findings and orders. It is the court's responsibility to reach the legal conclusions (findings) based on the facts presented.

The detention findings and orders must be made on the record and included in the written order. (Dependency—California Rule of Court 1444(b); Delinquency—California Rule of Court 1475(d)). In delinquency matters, the written detention order must be signed by the judge (Rule

¹ The information in this memorandum is based on laws in effect at the time of publication. Federal and state laws may change at any time.

1475(d)). The JRTA team recommends that the judge also sign written detention orders in dependency matters.

The JRTA team recommends that the court state on the record and that the written order include all title IV-E findings and orders for the pre-permanency hearing, permanency hearing, and post permanency hearing. However, the court may choose to make the findings and orders on the record through reference to and adoption of social worker's/probation officer's recommended findings and orders setting forth the name and date of the report and the page number(s) on which the recommendations are found. Please note that a copy of the recommended findings and orders adopted by the court must be attached to the written minute order or included as part of the written minute order.

The findings/orders discussed below are required for eligibility under title IV-E of the Social Security Act and/or compliance with Adoption and Safe Families Act² (ASFA). There are many other findings/orders required by California statutes that are beyond the purview of this memorandum.

Detention Hearing

Finding A

“Continuance in the home is contrary to the child’s welfare.”

The removal of a child from the home can have a severe and lasting impact on the child and the family. The Congressional intent in requiring this finding was to ensure that children are protected from unnecessary removals.

Order B

“Temporary placement and care is vested with the department.”

Include the name of the department³ in the order. For example, the Canyon County Department of Social Services or the Canyon County Probation Department.

Finding C

“Reasonable efforts have been made to prevent removal.”

It is the level of effort by the department that must be found to have been reasonable. The department may assess the situation of the child and family and decide that, **due to concerns for the child’s safety**, efforts beyond the initial response and assessment are not warranted. In that event, if the court views the department’s assessment as accurate and its actions appropriate, the

² The Adoption and Safe Families Act of 1997, Public Law 105-89. The federal regulations governing the review of a state’s conformity are found in 45 Code of Federal Regulations §§ 1355, 1356 & 1357.

³ The term ‘department’ refers to the probation department and department of social services unless otherwise noted.

level of effort will have been reasonable and the court can find that reasonable efforts have been made.

For federal Title IV-E purposes there must be a detention hearing and the two detention findings and one order must be made every time a child is removed from the home of a parent or guardian. This includes the removal from the parent's home of a child on electronic monitoring, home detention, furlough, or probation, for violation of a condition of release or probation.

The findings and order must also be made at a dispositional hearing if the child has remained in the home of the parents pending the dispositional hearing. The only difference would be the omission of the word "temporary" in the "vesting order".

The detention finding, "Continuance in the home is contrary to the child's welfare", must be made at the first court hearing following the child's removal. Welfare and Institutions Code⁴ sections 319(c) and 636(d)(4) require the court to make the "contrary to the welfare" finding or release the child from custody when continuing a detention hearing. The court may make a temporary finding at the first court appearance pending a further determination at the continued hearing.

The finding, "Reasonable efforts to prevent removal", must be made within 60 days of the child's removal and must refer to reasonable efforts made before removal. If this finding is not made within the 60 days, the child will be ineligible for title IV-E foster care funding for that entire stay in foster care.

A failure to make the "vesting" order results in ineligibility until the date the order is made.

It is best practice to make the detention findings and the 'vesting' order at the first court hearing following the child's removal from the home.

Prepermanency Hearing, Permanency Hearing, and Post Permanency Hearings

*Finding D1 Prepermanency Hearing, Permanency Hearing, and
Post Permanency Review Hearings*

"The child's placement is necessary and appropriate."

Please note that this is a two-part finding. The first issue is whether the child's placement in foster care continues to be necessary. The second is whether the current foster care placement meets the child's needs.

This finding is required at the pre-permanency, permanency, and post permanency hearings.

⁴ All code references are to the Welfare and Institutions Code unless otherwise noted.

Finding D2

Pre-permanency Hearing and Permanency Hearing

“The department has complied with the case plan by making reasonable efforts to make it possible for the child to safely return home AND to complete whatever steps are necessary to finalize the permanent placement of the child.”

This finding is required at the time of the pre-permanency hearing and the permanency hearing. It addresses the issue of concurrent planning.

The initial goal when a child is removed from the parents’ care as a ward of the court and placed in foster care is reunification with the parents. Services need to be offered to the family—parents and child.

The department must, at the same time, develop an alternative permanent plan for implementation in the event reunification is not possible.

Finding D2

Post permanency Hearing

“The department has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent placement of the child.”

This finding is required at the post permanency hearings. Following the termination of reunification services, the focus of the case plan shifts to achieving permanency for the child. The change in Finding D2 reflects this focus on permanency

Finding D3

Pre-permanency Hearing and Permanency Hearing

*“The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement...
by the mother has been _____
by the father has been _____
by the minor has been _____*

It is the intended that there be an assessment of the overall progress which can be characterized with a qualitative descriptor such as “none, minimal, moderate or substantial”. In a dependency proceeding, a separate finding is made as to the mother and father. In a delinquency proceeding the progress by the mother and father as well as the child must be assessed. A separate finding should be made for each. This finding is required at the time of the pre-permanency hearing and the permanency hearing.

Under federal law, a finding must be made at each six-month periodic review “projecting the likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship.” (42 U.S.C. § 675(5)(B).) The federal reviewers have stated that to ensure compliance, all six-month periodic reviews must project a date by which a permanent plan will be finalized. Federal law also requires the holding of a permanency hearing within twelve months of the date the child entered foster care.

We recommend making Finding D4 at the pre-permanency hearing and Finding D5 and Finding D6a or D6b at the permanency and post permanency hearings as set forth below to ensure that the most secure and permanent placement will be found for each child under the court’s jurisdiction and to fulfill the mandates of the law.

Finding D4 Pre-permanency Hearing

“The likely date by which the child may be returned to and safely maintained in the home OR placed for adoption, appointed a legal guardian, placed permanently with a relative or placed in an identified placement with a specific goal is_____.”

This finding is required at the time of the pre-permanency hearing. The correct date is the date of the scheduled permanency hearing because that is the date the child will be returned home or one of the other permanency hearing options will be ordered. The full date must be inserted. For example, April 5, 2005 is correct. April 2005 is not correct.

Finding D5 Permanency Hearing and Post Permanency Hearings

“The permanent plan of

- ☐ *return home* *or*
- ☐ *adoption* *or*
- ☐ *legal guardianship* *or*
- ☐ *permanent placement with _____, a fit and willing relative*
or
- ☐ *placement with _____ and a specific goal of _____ (Provide the name of the placement and select a goal of return home, adoption, guardianship, placement with a relative, a less restrictive foster care setting, or emancipation with identification of a long-term mentor.)*

is appropriate and is ordered as the permanent plan.”

California law provides for several options at the time of the permanency hearing. The court may:

1. Return the child to the parent’s home;

2. Order up to six additional months of reunification services⁵;
3. Terminate reunification services and order placement with specified “fit and willing relatives” or order a placement with an identified foster family, group home, or residential treatment center and a specific goal⁶; or
4. Terminate reunification services, identify adoption as the permanent plan and order the matter set for a hearing pursuant to section 366.26 for dependents or section 727.31 for delinquents to terminate parental rights.

During a JRTA educational review, credit is given for this finding at the twelve month permanency hearing when one of the above options is selected and at the eighteen month permanency hearing when option 1, 3, or 4 is selected.

Include the name of the specific relative with whom the child is placed if the permanent plan option chosen is “permanent placement with _____, a fit and willing relative.” Include the name of the foster family, group home, or residential treatment center if the permanent plan is an identified placement with a specific goal. Choose as a specific goal the option that provides the child with a more family-like and permanent setting. Although California’s Welfare and Institutions Code does continue to use the term “long-term foster care,” the phrase no longer appears in the federal statutes and it is not a preferred placement under ASFA. ASFA mandates regular reviews of a child’s status and permanency options. To provide the specificity needed to ensure that the agency and the court regularly assess placement permanency and plan for the child’s future the court should enter a placement order identifying, by name, the child’s placement and specifying the goal of that identified placement, without referencing it as “long-term foster care” or “planned permanent living arrangement.” The appropriate specific goal will depend upon the circumstances of the child’s situation. For example, for a child in an identified group home placement, the goal could be placement with a foster family or a relative.

If the placement is confidential, specify the type of placement (e.g. residential treatment center, group home, foster home, relative) followed by term “location confidential” and provide the court with the specific location under separate cover.

⁵ The court must find that reasonable services were not provided to the parent or that there is a “substantial probability that the child will be returned” and that the child and parent “have demonstrated the capacity and ability to complete the objectives of the case plan” when ordering up to six additional months of services. Welf. & Inst. Code §§ 361.5(a)(3), 366.21(e), & 366.21(g) for dependency and § 727.3(b)(2) for delinquency. See also Administration for Children and Families (ACF) Child Welfare Policy Manual, section 8.3C.2c. The Manual is available on the ACF website at: <http://www.acf.hhs.gov/programs/cb/laws/cwpm/index.jsp>

⁶ When terminating reunification services in dependency proceedings without referring the matter for a section 366.26 implementation hearing, the court must find by clear and convincing evidence that a compelling reason exists for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child. The finding must also be made at post permanency hearings for a child in an identified placement with a specific goal if the court does not order the matter set for a section 366.26 implementation hearing (Welf. & Inst. Code §§ 366.21(g)(3) and 366.3(g)).

A similar finding must be made in a delinquency proceeding. The court must find by clear and convincing evidence that a compelling reason exists for determining that a plan of termination of parental rights and adoption is not in the child’s best interests when entering an order at a permanency hearing or a post permanency hearing for an identified placement with a specific goal (Welf. & Inst. Code § 727.3(b)(6)).

Finding D5 must be made at the permanency hearing and all the post permanency hearings held every six months following the selection of the permanent plan.

Finding D6a Permanency Hearing and Post Permanency Hearings

*“The likely date by which the department will finalize the permanent plan
is ___/___/___.”*

OR

Finding D6b

*“The likely date by which the child’s specific goal will be achieved
is ___/___/___.” (Use D6b only for a child with a permanent plan of placement in an identified
placement with a specific goal.)*

The date selected as the likely date for finalization of the permanent plan or the likely date the child’s specific goal will be achieved must be based on a realistic assessment of the circumstances of the case.

For example, in a dependency proceeding, for a child with a permanent plan of adoption who is placed in a foster-adoptive home with a completed home study and no appeals regarding the termination of parental rights pending, the likely date of the finalization of the adoption may be in three months; however, for a child in an identified therapeutic group home placement with a specific goal of placement with a relative, the likely date for achieving the specific goal may be in 12 months based on the objectives of the child’s treatment plan.

In a delinquency proceeding, for a child in an identified placement in a high level group home for sex offenders with a specific goal of placement in a regular group home, the likely date for achieving the specific goal may be in twelve months based on the objectives of the child’s treatment plan; however, for a child in an identified placement in a regular group home with a specific goal of placement with a relative, the likely date for achieving the specific goal may be in six months.

Credit is given at the permanency hearing for this finding when the matter is referred for a hearing under section 366.26 or section 727.31 and the court makes the finding, “The likely date by which the child may be placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal is

_____.”
(Date of section 366.26 or section 727.31hearing)

Credit is given at the permanency hearing for this finding when the court orders six additional months of reunification services, finds a “substantial probability that the child will be returned” and makes the finding, “The likely date the child may be returned to and safely maintained in the

home OR placed for adoption, appointed a legal guardian, placed permanently with a relative or placed in an identified placement with a specific goal is _____.”
(Date of 18-month review hearing)

Finding D7

*Pre-permanency Hearing, Permanency Hearing, and
Post permanency Hearings*

“The court finds that the services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living.”

During each hearing (prepermanency, permanency, and post permanency) for a child 16 years of age or older, the court must assess the services provided by the agency as set forth in the case plan as well as the child’s *Transitional Independent Living Plan* (TILP) to determine whether the services will assist the child in making the transition from foster care to independent living. If so, the finding should be made. If not, the case plan should be amended and an appropriate finding made on the basis of the amended case plan. The successful transition of a young person from foster care to independent living is difficult and complex. It must be carefully planned and closely monitored.